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Gary M. Hartman

February 22, 2006  
Date

U.S. Patent Application Serial No. 10/707,526

TECHNOLOGY CENTER 3700 PERSONNEL:

**Attention: EXAMINER Stephen Choi  
Phone: (571) 272-4504**

THE FOLLOWING 8 - PAGE DOCUMENT IS A

**RESPONSE AFTER FINAL**

including:

- Response under 37 CFR §1.116
- Notice of Appeal
- Appeal Brief under 37 CFR §41.37
- Reply Brief under 37 CFR §41.41
- Request for Continued Examination (RCE) Transmittal
- Other:

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. :	10/707,526	Confirmation No. 1525
Applicant :	Patrick C. Urschel et al.	
Filed:	December 19, 2003	
TC/Art Unit:	3724	
Examiner :	Stephen Choi	
Docket No. :	A3-1700	
Customer No. :	27127	

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

REPLY BRIEF UNDER 37 CFR §41.41

This is a Reply Brief to the Examiner's Answer dated January 23, 2006, which was filed in response to Appellants' Appeal Brief filed November 7, 2005. As stated in Appellants' Appeal Brief and acknowledged in the Examiner's Answer, the present appeal is directed to Claims 1, 6-9, 14, 18, and 19 of the above-identified patent application. A correct copy of the rejected claims was previously set forth in the Claim Appendix of Appellants' Appeal Brief, and therefore is not provided herewith.

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**Re "Response to Argument"**

The "Grounds for Rejection" (Section 9) of the Examiner's Answer appear to be consistent with the grounds set forth in the final rejection. Therefore, the following is limited to responding to statements made in the "Response to Argument" (Section 10) of the Examiner's Answer.

The issues addressed under this section are:

(1) Whether the definition of the term "free-fall" used in Appellants' specification and claims encompasses the teachings of the prior art as now acknowledged in the Examiner's Answer.

(2) Whether, as required by MPEP 1207.02(A)(10), the Examiner's Answer provides "an explanation of the reasons for disagreement with" Appellants' contention for lack of motivation to combine the primary and secondary references.

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(1) Appellants' independent claims 1 and 14 under appeal require the following limitations:

individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; . . . .

Claim 1.

individually delivering food products to a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; . . . .

Claim 14.

In the Examiner's Answer, the Examiner asserted for the first time the following regarding the meaning of the term "free fall":

The claimed process does not preclude having intermediate or additional steps such as, steps of diced limited portion [sic] of the material being stopped onto a plate before slicing operation commences [sic] at the same time and slicing operation of the diced material.

Examiner's Answer (last sentence of paragraph bridging Pages 4 and 5).

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The reference to stopping the material on a plate before commencing a slicing operation is consistent with Appellants' arguments regarding the teachings of U.S. Patent No. 2,006,643 to Leo, the primary reference for all rejections under appeal. See Appellants' Appeal Brief, paragraph bridging Pages 18 and 19.

The word "free fall" is defined in *Webster's New Twentieth Century Dictionary, Unabridged* (Second Edition), as ""the unchecked fall of a body through the air." Therefore, Appellants respectfully disagree with the Examiner's position that Leo's teachings regarding a material being stopped on a plate prior to a cutting operation is within the scope of Appellants' claimed process that requires an "unchecked fall" of a product through a cutting means.

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(2) In their Appeal Brief, Appellants made the following arguments regarding whether there was motivation to modify the teachings of primary reference Leo in view of the teachings of secondary reference U.S. Patent No. 2,572,770 to Shadduck:

Appellants respectfully believe that Shadduck does not provide any motivation to modify Leo's apparatus by adding Shadduck's sloping tongues 36 to center the material being diced by Leo's screen 51 or sliced by Leo's knife 42, as there doesn't appear to be any purpose or benefit to such a modification. Though the Examiner's explanation for modifying Leo with Shadduck was "to center the food products within a casing having a cross section size larger than a cross section size of the food products so as to produce substantially uniform sized pieces," it appears that substantially uniform sized pieces of Leo's material would be produced regardless of where the material is within Leo's tubular receptacle 20, on the screen 51 during extrusion, or on the plate 37 during slicing by the knife 42. It appears particularly irrelevant to center Leo's material during the operation of Leo's apparatus since Leo teaches that the apparatus as disclosed is already capable of producing "slices of uniform size and thickness." See Leo at Page 1, Left Column, Lines 5-8.

Appeal Brief (paragraph bridging Pages 21 and 22).

In response, the Examiner's Answer explains:

It is the examiner's position that one of ordinary skill in the art with the teachings of Shadduck would have been clearly motivated to incorporate resilient members on the device of

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Leo in order to center the material having the cross-section size smaller than that of the receptacle so as to produce uniform cubes or blocks.

Examiner's Answer (fourth sentence of paragraph bridging Pages 5 and 6).

However, such an explanation does not comply with the requirement at MPEP 1207.02(A)(10) that the Examiner's Answer must provide "an explanation of the reasons for disagreement with" Appellants' contention regarding the lack of any motivation to center products within Leo's apparatus. Specifically, the Examiner's Answer does not explain any error in Appellants' contention that "it appears that substantially uniform sized pieces of Leo's material would be produced regardless of where the material is within Leo's tubular receptacle 20, on the screen 51 during extrusion, or on the plate 37 during slicing by the knife 42."

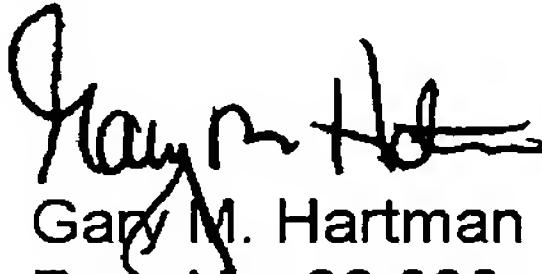
If, as Appellants contend, uniform sized pieces would be produced regardless of where a product is located within the cross-section of Leo's receptacle 20, then the Examiner's Answer fails to establish any motivation to modify Leo so as to center the product within Leo's receptacle 20.

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**Closing**

For the above reasons, Appellants again respectfully request that this Honorable Board reverse the Examiner's final rejections under 35 USC §§102 and 103.

Respectfully submitted,

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